

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 6, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 660

Introduced by Senators Leno and Hueso

February 27, 2015

An act to amend Sections 305, 307, 308, 309.6, ~~344~~, 1701.1, 1701.2, 1701.3, and 1701.4 of, and to add Sections 305.5, 1701.6, and 1701.7 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates. Existing law authorizes the executive director and the attorney to undertake certain actions if directed or authorized by the president, except as otherwise directed or authorized by vote of the commission.

This bill would repeal the requirement that the president direct the executive director, the attorney, and other commission staff. The bill would delete the authority of the president to direct or authorize the executive director and attorney to undertake certain actions, and would instead require that they be directed or authorized to undertake those actions by the commission. The bill would authorize the commission to delegate specific management and internal oversight functions to committees composed of 2 commissioners. The bill would require the commission to vote in an open meeting on the assignment or reassignment of proceeding to one or more commissioners.

(2) Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified if there is an appearance of bias or prejudice based on specified criteria. The bill would require that the commission procedures prohibit a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(3) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act regulates communications in hearings before the commission and

defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission’s Rules of Practice and Procedure define a “decisionmaker” as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner’s personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as an interested person. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include certain

individuals in the commission. The bill would require decisionmakers to periodically report summary logs of ex parte communications with interested persons in compliance with rules established by the commission, and included in the commission's Rules of Practice and Procedure, and would require the commission to post those summary logs on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications are permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days of the communication by filing a "Notice of Ex Parte Communication" with the commission in accordance with procedures established by the commission for the service of that notice and containing specified information.

This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party provided that copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be

sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party provided that copies of the communication are transmitted to all parties on the same day.

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in the Superior Court of the City and County of San Francisco against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 305 of the Public Utilities Code is
2 amended to read:

3 305. The Governor shall designate a president of the
4 commission from among the members of the commission. The
5 president shall preside at all meetings and sessions of the
6 commission.

7 SEC. 2. Section 305.5 is added to the Public Utilities Code, to
8 read:

9 305.5. (a) The commission shall direct the executive director,
10 the attorney, and other staff of the commission, except for the staff
11 of the Office of Ratepayer Advocates described in Section 309.5,
12 in performance of their duties.

13 (b) The commission may delegate specific management and
14 internal oversight functions to committees composed of two
15 commissioners. Committees shall meet regularly with staff and
16 shall report to the commission for additional guidance or approval
17 of decisions pertaining to the operations of the commission.

18 (c) The commission shall vote in an open meeting on the
19 assignment or reassignment of any proceeding to one or more
20 commissioners.

21 SEC. 3. Section 307 of the Public Utilities Code is amended
22 to read:

23 307. (a) The commission may appoint as attorney to the
24 commission an attorney at law of this state, who shall hold office
25 during the pleasure of the commission.

26 (b) The attorney shall represent and appear for the people of the
27 State of California and the commission in all actions and
28 proceedings involving any question under this part or under any
29 order or act of the commission. If directed to do so by the
30 commission, the attorney shall intervene, if possible, in any action
31 or proceeding in which any such question is involved.

32 (c) The attorney shall commence, prosecute, and expedite the
33 final determination of all actions and proceedings directed or
34 authorized by the commission, advise the commission and each
35 commissioner, when so requested, in regard to all matters in
36 connection with the powers and duties of the commission and the
37 members thereof, and generally perform all duties and services as

1 attorney to the commission that the commission may require of
2 him or her.

3 SEC. 4. Section 308 of the Public Utilities Code is amended
4 to read:

5 308. (a) The commission shall appoint an executive director,
6 who shall hold office during its pleasure. The executive director
7 shall be responsible for the commission's executive and
8 administrative duties and shall organize, coordinate, supervise,
9 and direct the operations and affairs of the commission and
10 expedite all matters within the commission's jurisdiction.

11 (b) The executive director shall keep a full and true record of
12 all proceedings of the commission, issue all necessary process,
13 writs, warrants, and notices, and perform any other duties as the
14 commission prescribes. The commission may authorize the
15 executive director to dismiss complaints or applications when all
16 parties are in agreement thereto, in accordance with rules that the
17 commission may prescribe.

18 (c) The commission may appoint assistant executive directors
19 who may serve warrants and other process in any county or city
20 and county of this state.

21 SEC. 5. Section 309.6 of the Public Utilities Code is amended
22 to read:

23 309.6. (a) The commission shall adopt procedures on the
24 disqualification of commissioners and administrative law judges
25 due to bias or prejudice similar to those of other state agencies and
26 superior courts.

27 (b) (1) For ratesetting and adjudicatory proceedings, a
28 commissioner or administrative law judge shall be disqualified if
29 there is an appearance of bias or prejudice based on any of the
30 following:

31 (A) Actions taken during the proceeding.

32 (B) Private communications before the commencement of the
33 proceeding to influence the request for relief sought by any party
34 to the proceeding.

35 (C) Actions demonstrating any commitment to provide relief
36 to a party.

37 (2) Past work experience by the commissioner or administrative
38 law judge shall not be a sufficient basis for demonstrating an
39 appearance of bias or prejudice pursuant to paragraph (1).

1 (c) The commission procedures shall prohibit a commissioner
2 or administrative law judge from ruling on a motion made by a
3 party to a proceeding to disqualify the commissioner or
4 administrative law judge due to bias or prejudice.

5 (d) The commission shall develop the procedures with the
6 opportunity for public review and comment.

7 ~~SEC. 6. Section 311 of the Public Utilities Code is amended~~
8 ~~to read:~~

9 ~~311. (a) The commission, each commissioner, the executive~~
10 ~~director, and the assistant executive directors may administer oaths,~~
11 ~~certify to all official acts, and issue subpoenas for the attendance~~
12 ~~of witnesses and the production of papers, waybills, books,~~
13 ~~accounts, documents, and testimony in any inquiry, investigation,~~
14 ~~hearing, or proceeding in any part of the state.~~

15 ~~(b) The administrative law judges may administer oaths,~~
16 ~~examine witnesses, issue subpoenas, and receive evidence, under~~
17 ~~rules that the commission adopts.~~

18 ~~(c) The evidence in any hearing shall be taken by the~~
19 ~~commissioner or the administrative law judge designated for that~~
20 ~~purpose. The commissioner or the administrative law judge may~~
21 ~~receive and exclude evidence offered in the hearing in accordance~~
22 ~~with the rules of practice and procedure of the commission.~~

23 ~~(d) Consistent with the procedures contained in Sections 1701.1,~~
24 ~~1701.2, 1701.3, and 1701.4, the assigned commissioner or the~~
25 ~~administrative law judge shall prepare and file an opinion setting~~
26 ~~forth recommendations, findings, and conclusions. The opinion~~
27 ~~of the assigned commissioner or the administrative law judge is~~
28 ~~the proposed decision and a part of the public record in the~~
29 ~~proceeding. The proposed decision of the assigned commissioner~~
30 ~~or the administrative law judge shall be filed with the commission~~
31 ~~and served upon all parties to the action or proceeding without~~
32 ~~undue delay, not later than 90 days after the matter has been~~
33 ~~submitted for decision. The commission shall issue its decision~~
34 ~~not sooner than 30 days following filing and service of the~~
35 ~~proposed decision by the assigned commissioner or the~~
36 ~~administrative law judge, except that the 30-day period may be~~
37 ~~reduced or waived by the commission in an unforeseen emergency~~
38 ~~situation or upon the stipulation of all parties to the proceeding or~~
39 ~~as otherwise provided by law. The commission may, in issuing its~~
40 ~~decision, adopt, modify, or set aside the proposed decision or any~~

1 part of the decision. Where the modification is of a decision in an
2 adjudicatory hearing it shall be based upon the evidence in the
3 record. Every finding, opinion, and order made in the proposed
4 decision and approved or confirmed by the commission shall, upon
5 that approval or confirmation, be the finding, opinion, and order
6 of the commission.

7 (e) (1) Any item appearing on the commission's public agenda
8 as an alternate item to a proposed decision or to a decision subject
9 to subdivision (g) shall be served upon all parties to the proceeding
10 without undue delay and shall be subject to public review and
11 comment before it may be voted upon. For purposes of this
12 subdivision, "alternate" means either a substantive revision to a
13 proposed decision that materially changes the resolution of a
14 contested issue or any substantive addition to the findings of fact,
15 conclusions of law, or ordering paragraphs. The commission shall
16 adopt rules that provide for the time and manner of review and
17 comment and the rescheduling of the item on a subsequent public
18 agenda, except that the item may not be rescheduled for
19 consideration sooner than 30 days following service of the
20 alternative item upon all parties. The alternate item shall be
21 accompanied by a digest that clearly explains the substantive
22 revisions to the proposed decision. The commission's rules may
23 provide that the time and manner of review and comment on an
24 alternate item may be reduced or waived by the commission in an
25 unforeseen emergency situation.

26 (2) In a proceeding in which both a proposed decision and an
27 alternate have been served upon the parties and comments have
28 been received on the proposed decision or alternate, or both, if
29 substantive revisions are made to the proposed decision or alternate
30 that was previously served upon the parties and made available
31 for comment, the substantively revised proposed decision or
32 substantively revised alternate shall be served upon all parties to
33 the proceeding and shall be made publicly available on the
34 commission's Internet Web site, noted on the docket sheet for the
35 proceeding, for not less than five full working days prior to it being
36 acted upon by the commission. Any party to the proceeding or
37 interested member of the public may file comments with the
38 commission addressing any substantively revised aspect of the
39 proposed decision or alternate prior to it being acted upon by the
40 commission.

1 ~~(f) The commission may specify that the administrative law~~
2 ~~judge assigned to a proceeding involving an electrical, gas,~~
3 ~~telephone, railroad, or water corporation, or a highway carrier,~~
4 ~~initiated by customer or subscriber complaint need not prepare,~~
5 ~~file, and serve an opinion, unless the commission finds that to do~~
6 ~~so is required in the public interest in a particular case.~~

7 ~~(g) (1) Prior to voting on any commission decision not subject~~
8 ~~to subdivision (d), the decision shall be served on parties and~~
9 ~~subject to at least 30 days public review and comment. Any~~
10 ~~alternate to any commission decision shall be subject to the same~~
11 ~~requirements as provided for alternate decisions under subdivision~~
12 ~~(e). For purposes of this subdivision, “decision” also includes~~
13 ~~resolutions, including resolutions on advice letter filings.~~

14 ~~(2) The 30-day period may be reduced or waived in an~~
15 ~~unforeseen emergency situation, upon the stipulation of all parties~~
16 ~~in the proceeding, for an uncontested matter in which the decision~~
17 ~~grants the relief requested, or for an order seeking temporary~~
18 ~~injunctive relief.~~

19 ~~(3) This subdivision does not apply to uncontested matters that~~
20 ~~pertain solely to water corporations, or to orders instituting~~
21 ~~investigations or rulemakings, categorization resolutions under~~
22 ~~Sections 1701.1 to 1701.4, inclusive, or orders authorized by law~~
23 ~~to be considered in executive session. Consistent with regulatory~~
24 ~~efficiency and the need for adequate prior notice and comment on~~
25 ~~commission decisions, the commission may adopt rules, after~~
26 ~~notice and comment, establishing additional categories of decisions~~
27 ~~subject to waiver or reduction of the time period in this section.~~

28 ~~(h) Notwithstanding any other provision of law, amendments,~~
29 ~~revisions, or modifications by the commission of its Rules of~~
30 ~~Practice and Procedure, shall be submitted to the Office of~~
31 ~~Administrative Law for prior review in accordance with Sections~~
32 ~~11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and~~
33 ~~subdivisions (a) and (b) of Section 11349.1 of, the Government~~
34 ~~Code. If the commission adopts an emergency revision to its Rules~~
35 ~~of Practice and Procedure based upon a finding that the revision~~
36 ~~is necessary for the preservation of the public peace, health and~~
37 ~~safety, or general welfare, this emergency revision shall only be~~
38 ~~reviewed by the Office of Administrative Law in accordance with~~
39 ~~subdivisions (b) to (d), inclusive, of Section 11349.6 of the~~
40 ~~Government Code. The emergency revision shall become effective~~

1 upon filing with the Secretary of State and shall remain in effect
2 for no more than 120 days. A petition for writ of review pursuant
3 to Section 1756 of a commission decision amending, revising, or
4 modifying its Rules of Practice and Procedure shall not be filed
5 until the regulation has been approved by the Office of
6 Administrative Law, the Governor, or a court pursuant to Section
7 11350.3 of the Government Code. If the period for filing the
8 petition for writ of review would otherwise have already
9 commenced under Section 1733 or 1756 at the time of that
10 approval, then the period for filing the petition for writ of review
11 shall continue until 30 days after the date of that approval. Nothing
12 in this subdivision shall require the commission to comply with
13 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part
14 1 of Division 3 of Title 2 of the Government Code. This
15 subdivision is only intended to provide for the Office of
16 Administrative Law review of procedural commission decisions
17 relating to commission Rules of Practice and Procedure, and not
18 general orders, resolutions, or other substantive regulations.

19 (i) The commission shall immediately notify the Legislature
20 whenever the commission reduces or waives the time period for
21 public review and comment due to an unforeseen emergency
22 situation, as provided in subdivision (d), (e), or (g).

23 SEC. 7.

24 SEC. 6. Section 1701.1 of the Public Utilities Code is amended
25 to read:

26 1701.1. (a) The commission, consistent with due process,
27 public policy, and statutory requirements, shall determine whether
28 a proceeding requires a hearing. The commission shall determine
29 whether the matter requires a quasi-legislative, an adjudication,
30 or a ratesetting hearing. The commission's decision as to the nature
31 of the proceeding shall be subject to a request for rehearing within
32 10 days of the date of that decision. If that decision is not appealed
33 to the commission within that time period it shall not be
34 subsequently subject to judicial review. Only those parties who
35 have requested a rehearing within that time period shall
36 subsequently have standing for judicial review and that review
37 shall only be available at the conclusion of the proceeding. The
38 commission shall render its decision regarding the rehearing within
39 30 days. The commission shall establish rules regarding ex parte
40 communication on case categorization issues.

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(d) (1) (A) “Ex parte communication,” for purposes of this article, means any oral or written communication between a decisionmaker and an interested person concerning any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The commission shall specify in its Rules of Practice and Procedure, enacted by rulemaking, the types of communications considered procedural matters under this article. Any communication between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission shall not be deemed to be a procedural matter and shall be an ex parte communication subject to this article.

(B) “Interested person,” for purposes of this article, means any of the following:

(i) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a party to the proceeding on any matter before the commission.

(ii) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the

1 Government Code, in a matter before the commission, or an agent
2 or employee of the person with a financial interest, or a person
3 receiving consideration for representing the person with a financial
4 interest. A person involved in issuing credit ratings or advising
5 entities or persons who may invest in the shares or operations of
6 any party to a proceeding is a person with a financial interest.

7 (iii) A representative acting on behalf of any civic,
8 environmental, neighborhood, business, labor, trade, or similar
9 organization who intends to influence the decision of a commission
10 member on a matter before the commission.

11 (iv) Other categories of individuals deemed by the commission,
12 by rule, to be an interested person.

13 (2) The commission shall by rule adopt and publish a definition
14 of decisionmakers and interested persons for purposes of this
15 section, along with any requirements for written reporting of ex
16 parte communications and appropriate sanctions for noncompliance
17 with any rule proscribing ex parte communications. The definition
18 of decisionmakers shall include, but is not limited to, each
19 commissioner; the attorney for the commission; the executive
20 director of the commission; the personal staff of a commissioner
21 if the staff is acting in a policy or legal advisory capacity; the Chief
22 Administrative Law Judge of the commission; the administrative
23 law judge assigned to the proceeding; and the director of the
24 Energy Division, the director of the Communications Division,
25 the director of the Water and Audits Division, and the director of
26 the Safety and Enforcement Division, where those directors are
27 acting in an advisory capacity in the proceeding.

28 (3) For quasi-legislative cases, the rules shall provide that ex
29 parte communications that are required to be reported shall be
30 reported by the interested person, whether the communication was
31 initiated by the interested person or the decisionmaker.

32 (4) For quasi-legislative cases, ex parte communications shall
33 be reported by an interested person within three working days of
34 the communication by filing a “Notice of Ex Parte
35 Communication” with the commission in accordance with the
36 procedures established by the commission for the service of that
37 notice. The notice shall include the following information:

38 (A) The date, time, and location of the communication, whether
39 it was oral, written, or a combination, and the communications
40 medium utilized.

1 (B) The person initiating the communication, including a
2 decisionmaker, when applicable, and the identity of the recipient
3 and any persons present during the communication.

4 (C) A complete and comprehensive description of the interested
5 person's and the decisionmaker's communication and its content,
6 to which shall be attached a copy of any written material or text
7 used during the communication.

8 (5) For adjudication and ratesetting cases, the rules shall provide
9 that if a prohibited ex parte communication occurs, whether
10 initiated by a decisionmaker or an interested person, all of the
11 following shall be required:

12 (A) The interested person participating in the communication
13 shall report the communication within one working day of the
14 communication by filing a Notice of Prohibited Ex Parte
15 Communication with the commission in accordance with the
16 procedures established by the commission for the service of that
17 notice. The notice shall include the information required by
18 paragraph (4).

19 (B) A decisionmaker who participated in the prohibited
20 communication shall comply with both of the following:

21 (i) If the interested person who participated in the
22 communication has not timely submitted the Notice of Prohibited
23 Ex Parte Communication required by subparagraph (A), the
24 decisionmaker shall promptly prepare and file a "Decisionmaker's
25 Notice of Prohibited Ex Parte Communication" with the
26 commission in accordance with the procedures established by the
27 commission for the service of that notice. The notice shall include
28 the information required by paragraph (4).

29 (ii) If the interested person has timely submitted the Notice of
30 Prohibited Ex Parte Communication required by subparagraph
31 (A), the decisionmaker shall review the interested person's
32 submitted notice. If the decisionmaker believes that the interested
33 person's submitted notice is not accurate or does not meet the
34 requirements of paragraph (4), the decisionmaker shall promptly
35 file a notice that corrects or supplements the interested person's
36 submitted notice in accordance with the procedures established by
37 the commission for the service of that notice. If the decisionmaker
38 believes that the interested person's submitted notice is accurate
39 and meets the requirements of paragraph (4), the decisionmaker
40 shall promptly file a notice that indicates his or her concurrence

1 with the interested person's submitted notice in accordance with
2 the procedures established by the commission.

3 (6) The commission shall not take any vote on a matter to which
4 a prohibited ex parte communication is known to have occurred
5 until the notices required by this subdivision have been made and
6 all parties to the proceeding have been provided a reasonable
7 opportunity to respond to the prohibited ex parte communication.

8 (7) If the prohibited ex parte communication is not disclosed as
9 required by this subdivision until after the commission has issued
10 a decision on the matter to which the prohibited communication
11 pertained, the commission shall provide a reasonable time for a
12 party to file a petition to rescind or modify the decision. The
13 commission shall process the petition in accordance with the
14 commission's procedures for petitions for modification and shall
15 issue a decision on the petition no later than 180 days after the
16 filing of the petition.

17 (8) A decisionmaker shall periodically report summary logs of
18 ex parte communications with interested persons in compliance
19 with rules established by the commission to be included in its
20 Rules of Practice and Procedure. The commission shall post the
21 summary logs on its Internet Web site. A summary log, at a
22 minimum, shall include information required in paragraph (3) and
23 in subparagraphs (A) and (B) of paragraph (4) and the relevant
24 proceedings discussed. If a decisionmaker believes that a Notice
25 of Ex Parte Communication submitted by an interested person in
26 a quasi-legislative case is inaccurate or fails to meet the
27 requirements of paragraphs (3) and (4), the decisionmaker may
28 include corrected or supplemental information in the summary log
29 and shall also provide notice of any corrected or supplemental
30 information in the proceeding to which it pertains in accordance
31 with the procedures established by the commission for the service
32 of that information. The commission shall enable the posting of
33 summary logs on its Internet Web site not later than July 1, 2016.

34 (9) (A) Ex parte communications that occur at conferences,
35 including open session communications, shall be governed by the
36 provisions of this article and any rules adopted by the commission
37 pursuant to this article.

38 (B) Notwithstanding subparagraph (A), the commission may
39 adopt rules for inclusion in the commission's Rules of Practice

1 and Procedure specific to open session communications if the rules
2 do both of the following:

3 (i) Open session communications relating to a pending
4 adjudication case or a pending ratesetting case shall be prohibited.

5 (ii) Open session communications relating to a pending
6 quasi-legislative case may be permitted if the commission's rules
7 require that permitted open session communications are promptly
8 disclosed in the proceeding to which the communication relates
9 and require that parties to the proceeding are allowed a reasonable
10 opportunity to respond to the communication before the
11 commission may vote on any matter to which the communication
12 pertained.

13 (C) For purposes of this section, "open session communication"
14 means an ex parte communication made in a speech, comment, or
15 writing delivered to all attendees of a noticed session of a
16 conference. All other ex parte communications at a conference,
17 including, but not limited to, communications in a private setting
18 or during meals, entertainment events, tours, and informal
19 discussions among conference attendees, are not included in the
20 definition of open session communication.

21 (10) The commission shall render its decisions based on the
22 evidence in the record. Ex parte communications shall not be a
23 part of the record of the proceedings.

24 ~~SEC. 8.~~

25 *SEC. 7.* Section 1701.2 of the Public Utilities Code is amended
26 to read:

27 1701.2. (a) If the commission pursuant to Section 1701.1 has
28 determined that an adjudication case requires a hearing, the
29 procedures prescribed by this section shall be applicable. The
30 assigned commissioner or the assigned administrative law judge
31 shall hear the case in the manner described in the scoping memo.
32 The scoping memo shall designate whether the assigned
33 commissioner or the assigned administrative law judge shall preside
34 in the case. The commission shall provide by rule for peremptory
35 challenges and challenges for cause of the administrative law judge.
36 Challenges for cause shall include, but not be limited to, financial
37 interests and prejudice. The rule shall provide that all parties are
38 entitled to one peremptory challenge of the assignment of the
39 administrative law judge in all cases. All parties are entitled to
40 unlimited peremptory challenges in any case in which the

1 administrative law judge has within the previous 12 months served
2 in any capacity in an advocacy position at the commission, been
3 employed by a regulated public utility, or has represented a party
4 or has been an interested person in the case. The assigned
5 commissioner or the administrative law judge shall prepare and
6 file a decision setting forth recommendations, findings, and
7 conclusions. The decision shall be filed with the commission and
8 served upon all parties to the action or proceeding without undue
9 delay, not later than 60 days after the matter has been submitted
10 for decision. The decision of the assigned commissioner or the
11 administrative law judge shall become the decision of the
12 commission if no further action is taken within 30 days. Any party
13 may appeal the decision to the commission, provided that the
14 appeal is made within 30 days of the issuance of the decision. The
15 commission may itself initiate a review of the proposed decision
16 on any grounds. The commission decision shall be based on the
17 record developed by the assigned commissioner or the
18 administrative law judge. A decision different from that of the
19 assigned commissioner or the administrative law judge shall be
20 accompanied by a written explanation of each of the changes made
21 to the decision.

22 (b) Notwithstanding Section 307, an officer, employee, or agent
23 of the commission that is personally involved in the prosecution
24 or in the supervision of the prosecution of an adjudication case
25 before the commission shall not participate in the decision of the
26 case, or in the decision of any factually related adjudicatory
27 proceeding, including participation in or advising the commission
28 as to findings of fact, conclusions of law, or orders. An officer,
29 employee, or agent of the commission that is personally involved
30 in the prosecution or in the supervision of the prosecution of an
31 adjudication case may participate in reaching a settlement of the
32 case, but shall not participate in the decision of the commission to
33 accept or reject the settlement, except as a witness or counsel in
34 an open hearing or a hearing closed pursuant to subdivision (d).
35 The Legislature finds that the commission performs both
36 prosecutorial and adjudicatory functions in an adjudication case
37 and declares its intent that an officer, employee, or agent of the
38 commission, including its attorneys, may perform only one of
39 those functions in any adjudication case or factually related
40 adjudicatory proceeding.

1 (c) (1) Ex parte communications shall be prohibited in
2 adjudication cases.

3 (2) Any oral or written communications concerning procedural
4 matters in adjudication cases between interested persons and
5 decisionmakers, except the assigned administrative law judge,
6 shall be prohibited.

7 (d) Notwithstanding any other law, the commission may meet
8 in a closed hearing to consider the decision that is being appealed.
9 The vote on the appeal shall be in a public meeting and shall be
10 accompanied with an explanation of the appeal decision.

11 (e) Adjudication cases shall be resolved within 12 months of
12 initiation unless the commission makes findings why that deadline
13 cannot be met and issues an order extending that deadline. In the
14 event that a rehearing of an adjudication case is granted, the parties
15 shall have an opportunity for final oral argument.

16 (f) (1) The commission may determine that the respondent
17 lacks, or may lack, the ability to pay potential penalties or fines
18 or to pay restitution that may be ordered by the commission.

19 (2) If the commission determines that a respondent lacks, or
20 may lack, the ability to pay, the commission may order the
21 respondent to demonstrate, to the satisfaction of the commission,
22 sufficient ability to pay potential penalties, fines, or restitution that
23 may be ordered by the commission. The respondent shall
24 demonstrate the ability to pay, or make other financial
25 arrangements satisfactory to the commission, within seven days
26 of the commission commencing an adjudication case. The
27 commission may delegate to the attorney to the commission the
28 determination of whether a sufficient showing has been made by
29 the respondent of an ability to pay.

30 (3) Within seven days of the commission's determination of the
31 respondent's ability to pay potential penalties, fines, or restitution,
32 the respondent shall be entitled to an impartial review by an
33 administrative law judge of the sufficiency of the showing made
34 by the respondent of the respondent's ability to pay. The review
35 by an administrative law judge of the ability of the respondent to
36 pay shall become part of the record of the adjudication and is
37 subject to the commission's consideration in its order resolving
38 the adjudication case. The administrative law judge may enter
39 temporary orders modifying any financial requirement made of
40 the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate of return or rate of margin regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

~~SEC. 9.~~

SEC. 8. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision. An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments of the case. The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting. The alternate decision shall be filed with the commission and shall be served on all parties simultaneously with the proposed decision.

The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(b) The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a

1 regulated public utility, or has represented a party or has been an
2 interested person in the case.

3 (c) (1) Ex parte communications are prohibited in ratesetting
4 cases.

5 (A) Oral communications may be permitted without any
6 reporting obligation at any time by any decisionmaker if all parties
7 are invited and given not less than three working days' notice.

8 (B) Written ex parte communications by any interested person
9 may be permitted without any reporting requirement provided that
10 copies of the communication are transmitted to all parties on the
11 same day as the original communication. Written ex parte
12 communications shall not be part of the record of the proceeding.

13 (2) Oral communications concerning a procedural matter in
14 ratesetting cases between interested persons and decisionmakers,
15 except the assigned administrative law judge, are prohibited, except
16 that an oral communication may be permitted at any time by any
17 decisionmaker if all parties are invited and given not less than
18 three working days' notice.

19 (3) Written communications concerning a procedural matter in
20 ratesetting cases between interested persons and decisionmakers,
21 except the assigned administrative law judge, are prohibited, except
22 that a decisionmaker may permit a written communication by any
23 party if copies of the communication are transmitted to all parties
24 on the same day.

25 (d) Any party has the right to present a final oral argument of
26 its case before the commission. Those requests shall be scheduled
27 in a timely manner. A quorum of the commission shall be present
28 for the final oral arguments.

29 (e) The commission may, in issuing its decision, adopt, modify,
30 or set aside the proposed decision or any part of the decision based
31 on evidence in the record. The final decision of the commission
32 shall be issued not later than 60 days after the issuance of the
33 proposed decision. Under extraordinary circumstances the
34 commission may extend this date for a reasonable period. The
35 60-day period shall be extended for 30 days if any alternate
36 decision is proposed pursuant to Section 311.

37 ~~SEC. 10.~~

38 *SEC. 9.* Section 1701.4 of the Public Utilities Code is amended
39 to read:

1701.4. (a) If the commission pursuant to Section 1701.1 has determined that a quasi-legislative case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned administrative law judge shall act as an assistant to the assigned commissioner in quasi-legislative cases. The assigned commissioner shall be present for formal hearings. The assigned commissioner shall prepare the proposed rule or order with the assistance of the administrative law judge. The assigned commissioner shall present the proposed rule or order to the full commission in a public meeting. The report shall include the number of days of hearing and the number of days that the commissioner was present.

(b) Ex parte communications shall be permitted. Any ex parte communication shall be reported by an interested person in accordance with subdivision (d) of Section 1701.1 and the procedures established by the commission for the service of that notice. No reporting shall be required for written ex parte communications that are transmitted to all parties on the same day as the original communication.

(c) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

~~SEC. 11.~~

SEC. 10. Section 1701.6 is added to the Public Utilities Code, to read:

1701.6. (a) In addition to any penalty, fine, or other punishment applicable pursuant to Article 11 (commencing with Section 2100), the commission may assess civil sanctions upon any entity or person, other than a decisionmaker or employee of the commission, who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements of this

1 article or those adopted by the commission pursuant to this article.
2 The civil sanctions may include civil penalties, adverse
3 consequences in commission proceedings, or other appropriate
4 commission orders directed at the entity, person, or both the entity
5 and person, committing the violation.

6 (b) (1) Except as provided in paragraph (2), a civil penalty
7 assessed shall not exceed fifty thousand dollars (\$50,000) per
8 violation. Each day of a continuing violation is a separate violation.
9 If the violation consists of engaging in a communication that is
10 prohibited by the ex parte communication requirements, each day
11 that the violation is not disclosed to the commission and to parties
12 of record in the formal proceeding in which the communication
13 occurred shall constitute a separate violation. If the violation
14 consists of failing to file a required notice of a permissible ex parte
15 communication or filing a notice of a permissible ex parte
16 communication that is inaccurate or incomplete, each day that the
17 violation is not remedied shall constitute a separate violation.

18 (2) If the entity or person may obtain, by violating the ex parte
19 communication requirements, financial benefits that exceed the
20 maximum amount of civil penalty allowable pursuant to paragraph
21 (1), the commission may impose a civil penalty up to the amount
22 of those financial benefits.

23 (c) Civil penalties assessed pursuant to subdivision (b) upon
24 entities whose rates are determined by the commission shall be in
25 the form of credits to the customers of that entity. Civil penalties
26 collected from other entities shall be deposited in the General Fund.

27 (d) In determining the appropriate civil sanctions, the
28 commission shall consider the following factors:

29 (1) The severity of the violation.

30 (2) The conduct of the entity or person, including the level of
31 experience of the entity or person in participating in commission
32 proceedings.

33 (3) The financial resources of the entity or person.

34 (4) The totality of the circumstances in furtherance of the public
35 interest.

36 ~~SEC. 12.~~

37 *SEC. 11.* Section 1701.7 is added to the Public Utilities Code,
38 to read:

39 1701.7. (a) The Attorney General may bring an enforcement
40 action in the Superior Court for the City and County of San

1 Francisco against a decisionmaker or employee of the commission
2 who violates, fails to comply with, or procures, aids, or abets any
3 violation of, the ex parte communication requirements in this article
4 or those adopted by the commission pursuant to this article. The
5 court shall expedite its review of the action to provide effective
6 and timely relief.

7 (b) (1) Notwithstanding Section 1759, in an enforcement action
8 brought pursuant to this section, the court may grant appropriate
9 relief, including disqualification of the decisionmaker from one
10 or more proceedings and civil penalties not to exceed fifty thousand
11 dollars (\$50,000) for each violation.

12 (2) If the decisionmaker or employee may obtain, by violating
13 the ex parte communication requirements, financial benefits that
14 exceed the civil penalties provided in paragraph (1), the court may
15 impose a civil penalty up to the amount of those financial benefits.

16 (c) In determining the appropriate relief, the court may consider
17 the following factors:

18 (1) The severity of the violation.

19 (2) The conduct of the decisionmaker or employee, including
20 whether the decisionmaker or employee knowingly violated the
21 ex parte communication requirements.

22 (3) The financial resources of the decisionmaker or employee.

23 (4) The totality of the circumstances in furtherance of the public
24 interest.

25 (d) The Attorney General may compromise the enforcement
26 action subject to approval by the court.

27 (e) Civil penalties collected pursuant to this section shall be
28 deposited into the Litigation Deposits Fund established pursuant
29 to Article 9 (commencing with Section 16425) of Chapter 2 of
30 Part 2 of Division 4 of Title 2 of the Government Code.

31 ~~SEC. 13.~~

32 *SEC. 12.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O